

Department of Commerce

1352.228-74

DEDUCTIBLES UNDER REQUIRED INSURANCE COVERAGE—COST REIMBURSEMENT (APR 2010)

(a) The contractor is required to present evidence of the amount of any deductibles in its insurance coverage.

(b) For any insurance required pursuant to 1352.228-70, *Insurance Coverage*, the contractor's deductible is not allowable as a direct or indirect cost under this contract. The Government is not liable, and cannot be invoiced, for any losses up to the minimum amounts of coverage required in paragraphs (a) through (d) of clause 1352.228-70. If the contractor obtains an insurance policy with deductibles, the contractor, and not the Government, is responsible for any deductible amount up to the minimum amounts of coverage stated.

(c) If the contractor fails to follow all procedures stated in this subsection and in FAR 52.228-7(g), any amounts above the amount of the obtained insurance coverage which are not covered by insurance will not be reimbursable under the contract.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.228-72 Deductibles under required insurance coverage—fixed price.

As prescribed in 48 CFR 1328.310-70(d), insert the following clause:

DEDUCTIBLES UNDER REQUIRED INSURANCE COVERAGE—FIXED PRICE (APR 2010)

When the Government is injured, wholly or partially as a result of the contractor's actions and such actions are covered by the insurance required by 1352.228-70, *Insurance Coverage*, the Government is entitled to recover from the contractor the full amount of any such injury attributable to the contractor regardless of a deductible. The Contracting Officer may offset the amount of recovery against any payment due to the contractor.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.228-73 Loss of or damage to leased aircraft

As prescribed in 48 CFR 1328.310-70(e) and 1328.310-70(f), insert the following clause:

LOSS OF OR DAMAGE TO LEASED AIRCRAFT (APR 2010)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 1252.228-74, *Fair Market Value of Aircraft*, less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) Credited to the Government in determining the amount of the Government's liability; or

(2) For an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the contractor against third parties for such loss or damage and the contractor shall promptly assign such rights in writing to the Government.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.228-74 Fair market value of aircraft.

As prescribed in 48 CFR 1328.310-70(e) and 48 CFR 1328.310-70(g) insert the following in all applicable contracts for leased aircraft:

FAIR MARKET VALUE OF AIRCRAFT (APR 2010)

For purposes of the clause entitled "Loss of or Damage to Leased Aircraft," it is agreed that the fair market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values

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set out in paragraphs (a) and (b) of this clause:

(a) \$ _____; or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage is the maximum amount for which the Government may be responsible under this contract.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.228-75 Risk and indemnities.

As prescribed in 48 CFR 1328.310-70(e) and 48 CFR 1328.310-70(h), insert the following in all applicable contracts for leased aircraft:

RISK AND INDEMNITIES (APR 2010)

The contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.228-76 Approval of group insurance plans.

As prescribed in 48 CFR 1328.310-70(i), insert the following clause:

APPROVAL OF GROUP INSURANCE PLANS (APR 2010)

Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor shall submit the plan for approval to the Contracting Officer. Any change in benefits provided under an approved plan that can reasonably be expected to increase significantly the cost to the Government shall require similar approval.

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(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

352.231-70 Precontract costs.

As prescribed in 48 CFR 1331.205-32, insert the following clause:

PRECONTRACT COSTS (APR 2010)

The contractor is entitled to reimbursement for allowable, allocable, and reasonable costs incurred during the period of _____ to the award date of this contract in an amount not to exceed \$ _____.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.231-71 Duplication of effort.

As prescribed in 48 CFR 1331.205-70, insert the following clause:

DUPLICATION OF EFFORT (APR 2010)

The contractor hereby certifies that costs for work to be performed under this contract and any subcontract hereunder are not duplicative of any costs charged against any other Government contract, subcontract, or other Government source. The contractor agrees to advise the Contracting Officer, in writing, of any other Government contract or subcontract it has performed or is performing which involves work directly related to the purpose of this contract. The contractor also certifies and agrees that any and all work performed under this contract shall be directly and exclusively for the use and benefit of the Government, and not incidental to any other work, pursuit, research, or purpose of the contractor, whose responsibility it will be to account for it accordingly.

(End of clause)

[75 FR 10570, Mar. 8, 2010; 75 FR 14496, Mar. 26, 2010]

1352.233-70 Agency protests.

As prescribed in 48 CFR 1333.103(a), insert the following provision:

AGENCY PROTESTS (APR 2010)

(a) An agency protest may be filed with either: (1) The contracting officer, or (2) at a level above the contracting officer, with the appropriate agency Protest Decision Authority. See 64 FR 16,651 (April 6, 1999).

(b) Agency protests filed with the Contracting Officer shall be sent to the following